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UNCLAS SECTION 01 OF 05 TAIPEI 000248

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SUBJECT: Taiwan IPR: 2008 301 Watch List Submission

REFTEL: A) 2007 Taipei 2529, B) Taipei 8, C) 2007 Taipei 2442, D)

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Overall Assessment

1. (SBU) In 2007, Taiwan continued to take measures to reduce intellectual property right (IPR) infringement and strengthen its IPR regime. AIT notes several positive developments over the past year, most importantly the June passage by the Legislative Yuan (LY) of a new law aimed at ending illegal file-sharing over peer-to-peer (P2P) platforms, which enabled officials to shut down some of the worst violators. Pharmaceutical industry representatives praised Taiwan for increasing its efforts to combat counterfeit pharmaceuticals, and the Ministry of Education (MOE) worked to reduce IPR violations on Taiwan's college campuses with its Campus IP Action Plan. In addition, the specialized IP Court remains on schedule to open in July of this year, though some rights-holder groups fear that there will not be enough judges or specialized prosecutors to cover the estimated caseload.

2. (SBU) However, many problems remain. While physical copying of optical-disk media continues to decline, digital piracy of music and movies is a growing problem, and the authorities failed to send to the LY an amendment to the Copyright Law that would limit an Internet service provider's (ISP) liability if the ISP quickly removed IPR-infringing material. Although the Business Software Alliance reported that Taiwan's software piracy rate has dipped slightly to 41 percent in 2007 from 43 percent the year before, some software companies' representatives believe that the actual rate is significantly higher. Rights-holders continue to criticize Taiwan Customs for not doing enough to prevent counterfeit drugs, CDs, and DVDs from entering Taiwan by mail. Although the MOE's Campus IP Action Plan has led to some improvements in IP enforcement at Taiwan's universities, the Plan has been hampered by its voluntary nature, as well as the Ministry's reluctance to more actively engage with rights-holder groups. Finally, Taiwan's overly-broad use of compulsory licenses seems to violate its commitments under the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS).

3. (SBU) Overall, despite continued progress in IP enforcement, AIT does not believe that Taiwan has taken sufficient steps to merit removal from the Watch List. In 2008, we will encourage Taiwan to demonstrate continued commitment to IPR enforcement by passing the ISP amendment, opening the long-awaited IP Court on schedule, and reducing digital piracy on university campuses. End overall assessment.

Ongoing Areas of Review

Notorious Markets

14. (SBU) Piracy in Taiwan's night markets has declined over the past decade, and there are no "notorious" physical markets. In addition, in the wake of the June 2007 passage of the P2P bill, the authorities have successfully shut down and prosecuted the worst of the infringing P2P platforms. Ironically, the infringing website of most concern to the Taiwan authorities is now GoFoxy dot net, which, although aimed at a Taiwanese market, is hosted in the United States.

Optical Media

15. (SBU) According to the International Federation of the Phonographic Industry (IFPI), which represents the international recording industry in Taiwan, as legitimate CD sales in Taiwan have dropped by half since 2004, the percentage of pirated copies has fallen from 36 percent of all copies sold to 22 percent (ref A). IFPI estimates that the number of physical outlets for pirated CDs has also fallen to only 30 stores around Taiwan, versus 250 a decade ago, and other rights-holder groups agree that large-scale production and distribution of physically-pirated goods is declining. According to police records, there were 227 music-related physical piracy cases in Taiwan in 2006 and only about 150 in 2007. Rights-holder groups believe that most domestic physical movie counterfeiting is now individuals burning counterfeit DVDs on home computers, with the majority of pirated DVDs coming from the PRC and other overseas mail-order sites that take orders over the Internet and deliver physical copies by mail.

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Digital Piracy

16. (SBU) Digital piracy of music and movies, however, continues to grow and is now the number one concern for movie and music rights-holder groups. According to police statistics, Taiwan authorities prosecuted 165 music-related digital piracy cases in 2006, which increased 60 percent in 2007 to 265 cases. According to local experts, the Internet movie piracy rate is lower than that for music downloads, but they believe that the movie downloading problem will worsen as broadband Internet service becomes cheaper and more widely available. Rights-holder groups also assert that Taiwan's judiciary does not take the digital piracy problem as seriously as it does physical piracy, despite the fact that Internet violators have the potential to reach even more customers than traditional underground DVD factories.

17. (SBU) There has been some good news in the fight against digital piracy in Taiwan, however. In 2006 and 2007, IFPI members sent more than 2500 "Cease and Desist" letters asking major Internet service providers (ISPs) and auction sites to remove unauthorized music content, with an 80 percent success rate in having the ISP remove the offending content. In June 2007, Taiwan passed legislation providing a legal basis for prosecuting online peer-to-peer platforms whose service allows for the exchange of IPR-infringing materials. In September 2007, law enforcement agencies worked with IFPI to raid and shut down the two largest P2P service providers in Taiwan: Kupeer and Hip2p (ref A). Most Taiwan colleges have also begun to enforce maximum daily download limits in order to restrict student use of P2P platforms on school computers, though administrators tell econoff that they are reluctant to completely ban the use of P2P software (Ref B).

18. (SBU) Taiwan continues to make progress on developing legislation that would limit an ISP's liability if the provider quickly removed IPR-infringing material, but no legislation has yet been passed into law. In 2007, the Taiwan Intellectual Property Office (TIPO) proposed an amendment to the Copyright Law and sought comments from the United States--along with ISPs and rights-holder groups. The

current version incorporates many U.S. suggestions. Although the bill was forwarded to the LY last year, the 2007 LY session ended before action was taken on the bill. TIPO plans to re-introduce the proposed amendment during 2008's LY session.

Software, Including Use and Procurement by Authorities

¶9. (SBU) According to surveys done by the Business Software Alliance (BSA), 41 percent of member-company software used in Taiwan is unauthorized, down from 43 percent in 2006 and 2005. The true picture of software piracy is likely worse, however. Software makers have told AIT that that BSA's worldwide survey methodology undercounts the true level of unauthorized use by at least 10 percentage points in Taiwan. According to rights-holders, unauthorized use of software--including illegal copies, expired licenses, and under-reporting of licensed users--is common not only in the business community, but also on university campuses and within official agencies. However, rights-holders tell AIT that although BSA's numbers may underestimate the problem, the situation in Taiwan is slowly improving, and that its 41-percent piracy rate compares favorably with Singapore's 39 percent and Hong Kong's 53 percent.

TRIPS Compliance and Other IPR Issues

¶10. (SBU) Compulsory licensing is a practice whereby a company can request that the authorities grant the company a license to produce a patented product without the rights-holder's permission, and often at a below-market rate. In 2004, TIPO granted the Taiwan company Gigastorage a compulsory license to use Philips patents to produce CD-Rs and CD-RWs. On January 31, the EU released a Trade Barriers Regulation (TBR) investigation report on the Philips compulsory licensing case. The EU investigators found that Taiwan violated its commitments under the TRIPS agreement, and recommended that the EU initiate WTO action if Taiwan does not revoke the original grants of compulsory licenses against Philips, as well as take concrete steps to change the laws on such licenses within two months of the release date of the report. Although Gigastorage's compulsory license was withdrawn in September 2007, Philips has appealed Taiwan's original decision to issue the license, and expects that the Taipei High Administrative Court will hand down its ruling on this case in the first half of 2008 (ref C).

¶11. (SBU) 2007 also saw an attempt by Taiwan to expand the potential

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use of compulsory licensing. After strong protests from business groups and trading partners, however, in October, the LY suspended debate on a proposed amendment to the Patent Act that would have allowed Taiwan authorities a broader use of compulsory licensing for pharmaceuticals and other patented products for domestic use and export. TIPO, the agency responsible for drafting amendments to the Act, has told AIT that it has no plans to re-introduce such a bill to the LY during the 2008 session.

Data Protection

¶12. (U) Taiwan has three laws that cover data protection: the Personal Data Protection Law, the Trade Secrets Act, and the Integrated Circuit Layout Protection Act. AIT has heard no complaints from industry about problems with data protection in Taiwan.

¶13. (SBU) In February 2006 Taiwan implemented a new Pharmaceutical Law which provides pharmaceutical companies five years of data exclusivity for new drugs. This coverage is limited to chemical entity products and does not cover new indications. It also allows competitors to refer to the originators' data and submit generic filings three years after the originator gains market approval. New products must be registered in Taiwan within three years of release in an advanced-country market. Taiwan has not yet established a system of patent linkage in the regulatory procedures for approving generics. The Department of Health has expressed some interest in

setting up such a system and has studied the U.S. Orange Book system, but so far there are no plans to implement a U.S.-style patent linkage system (ref D).

Production, Import and Export of Counterfeit Goods

¶14. (SBU) Most large-scale pirating of optical media, software, and clothing has shifted to other locations in Asia. Since 2002, enforcement authorities have increased the frequency and effectiveness of raids against night markets and large-scale optical media factories, significantly reducing the number of pirated products for retail sale. In response, over the past few years, IP pirates have shifted from large optical media plants to small, custom optical-media burning operations, often for home delivery and sale over the Internet, or have shifted production overseas.

¶15. (SBU) Trademark infringement, including fake cigarettes, clothing, handbags, watches, and footwear is also an area of concern in Taiwan, but official enforcement efforts remain robust. In 2007, police filed 2890 cases involving trademark infringement, up 38% from 2006, and arrested 3,279 suspects, up 37% from 2006. Taiwan Customs reported that the number of seizures of counterfeit branded goods increased from 241 in 2006 to 300 in 2007, and Taiwan Customs impounded 4,446,506 items in 2007, compared to 2,973,653 items in ¶2006. Counterfeit cigarettes accounted for most of these items, since each of about four million cigarettes each count as one item, but Customs also seized counterfeit cosmetics, leather goods, PC boards, medicines, and clothing. In addition, Taiwan Customs seized 7707 trademark-violating export goods.

¶16. (SBU) Rights-holder groups have praised Taiwan's efforts over the past year against counterfeit pharmaceuticals (ref E). The International Research-based Pharmaceutical Manufacturers' Association (IRPMA), the original-drug manufacturers' industry group in Taiwan, remains concerned about counterfeit drugs, but in its 2008 Policy Priority Paper, IRPMA ranks the issue far below other IPR issues such as patent linkage and data exclusivity.

Enforcement: Active Police, Slow Courts, Light Sentences

¶17. (SBU) Taiwan's Joint Optical Disk Enforcement (JODE) Task Force conducted 1008 inspections of optical disk manufacturers in 2007, and found no violations of Taiwan law. The IPR Police conducted 6582 raids, filed 18 percent more infringement cases in 2007 than in 2006 and made 15 percent more arrests. The IP Police's efforts show the increasingly digital nature of piracy in Taiwan. Of the 2280 infringement cases that the IP Police handled in 2007, 1791 were Internet infringement cases, with the rest retail and night-market cases.

¶18. (SBU) The National Police also continued to use regular units to investigate IPR infringement cases, and 2007 figures show an increase in the number of cases filed and suspects arrested. Cases increased by 22% to 6,274 and arrests increased 25% to 7,119. Continuing a trend of the past several years, police seizures of

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counterfeit optical media decreased compared to the same period in last year, which officials attribute to the growing popularity of downloading digital content from the Internet. Most successful IPR-related prosecutions, however, do not end in jail time for the violators. In 2007, Taiwan courts handed down 2,434 sentences for IPR-related crimes, and 2069 were fines or short jail terms that are typically converted into fines.

¶19. (SBU) Rights-holder groups continue to complain about the slow pace of Taiwan's judicial process. According to Spencer Yang, Executive Director of the Taiwan Foundation Against Copyright Theft (TFACT), TFACT's case against the Ezpeer P2P site has dragged on since 2005, and the Foundation also has two other cases that it raised with the courts in November 2006 and are still under investigation by the prosecutor's office. The specialized IP Court may help with this process, and we expect the court will start hearing cases in July 2008. Rights-holder groups, however, while

encouraged by the court's establishment, are pessimistic that the IP Court will be able to improve IPR-related prosecutions since it will only have about 10 specialized IP judges and the same number of prosecutors. Currently, the Taipei District Court alone has 12 judges who hear IP cases as part of their normal caseload.

¶20. (SBU) Industry contacts believe that Taiwan Customs is the weakest link in Taiwan's overall efforts against imported pirated goods. According to rights-holder groups, the most popular way to smuggle counterfeit drugs and optical disks into Taiwan is by mail-order from Thailand or China. Rights-holder groups, however, complain that Customs is not willing to spend time seizing smaller quantities of counterfeits or doing follow-up investigations. Although most pirated CDs and DVDs now come into Taiwan by air parcel in packs of five or less, Customs officers have little interest in intercepting such packages due to the large amount of paperwork each case requires, as well as a lack of manpower dedicated to follow-up investigations (ref E).

¶21. (SBU) Taiwan Customs conducts border inspection on both imports and exports for pirated goods. In 2007, Taiwan Customs seized three export and 300 import shipments with trademark infringements and 77 import shipments with copyright infringements. Of the 77 import copyright infringement cases, most infringements were related to counterfeit Nintendo games. While changes to the copyright law in 2004 allowed for ex officio inspections by Taiwan Customs, the law requires rights holders to verify within a short period that the seized materials are counterfeit. TFACT routinely sends personnel to Taoyuan International Airport to verify the authenticity of suspect parcels, but Customs reports that some rights holders are not responsive to requests to verify suspect trademark violations.

¶22. (SBU) In 2007, the Taiwan Ministry of Education (MOE) made reducing campus intellectual property rights (IPR) violations a priority, and their efforts are may be creating some positive results. Although the Campus IP Action Plan that the MOE released end-October was watered down by university complaints, many schools have stepped up enforcement efforts in response to the Plan's incentives. Textbook copying and other physical piracy appear to have continued their decade-long decline due to heightened enforcement and increased understanding of Taiwan's IPR laws by students and copy shop employees (Ref B), as well as the increasing use of cheaper, Chinese-language texts. Rights-holder groups, however, have told AIT that the action plan results are tentative at best and that digital piracy is rampant on Taiwan's university campuses. Software companies complain that the MOE and universities are not doing enough to combat unauthorized software use on campuses, and also that the MOE has not held promised meetings with rights-holder groups.

¶23. (SBU) Rights-holder groups have also complained that--due to a loophole in Taiwan's Copyright Law--clearly counterfeit goods seized during investigations are often returned to defendants if the investigation does not end in an indictment. In late January, however, TIPO completed a draft amendment to the Copyright Law and sent the draft to the Ministry of Justice (MOJ) for comment. TIPO recently told econoff that if the MOJ and TIPO can quickly agree on the draft's language, TIPO will send the amendment to the EY for approval this spring, which could mean that the amendment would be taken up by the LY by mid-year. In the meantime, TIPO's Deputy Director General, Margaret Wang, recently told us that TIPO is working with the MOJ and Judicial Yuan (JY) to find a way to mitigate this problem until the law can be changed.

Treaties

¶24. (U) Taiwan is not a member of the UN and is therefore not a
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signatory to the 1996 WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT).

Comment

¶25. (SBU) Taiwan has made significant progress in addressing the outstanding IPR problems identified in last year's report. We believe that the Taiwan authorities firmly support an effective IPR policy, but have thus far not been able to ensure complete implementation of that support. Specifically, Taiwan has prepared viable legislation on Internet service provider (ISP) liability, but has not yet submitted it to the legislature. Although Taiwan has laid the groundwork for the long-planned Intellectual Property (IP) Court, the Court is not yet up and running. If the U.S. makes these two issues a priority, however, we are optimistic that we can help facilitate substantial progress over the next six months. At the same time, we want to ensure that Taiwan maintains its current efforts under the IP Action Plan to reduce piracy on campuses. With these three major goals in mind, therefore, we believe that if Taiwan continues its campus anti-piracy efforts, passes ISP liability legislation, and opens the IP Court in July as scheduled, Taiwan should benefit from an out-of-cycle review with the goal of recognizing sustained progress on IP through removal from the Watch List.